FILE COPY.

Office Supreme Court, U. S.
FILED.
JAN 28 1907
JAMES H. McKENNEY,
CLERK.

No. 201.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY ET AL., APPELLANTS,

v.

THE INTERSTATE COMMERCE COMMISSION, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

ARGUMENT FOR THE INTERSTATE COMMERCE COMMISSION.

L. A. SHAVER,
Solicitor for Appellee.
P. J. FARRELL,
Attorney.

SYLLABUS.

	Page.
1. Statement of case	7
(a) Grounds of complaint before the Commission	8
(b) Finding and order of the Commission	9
(c) Issue presented by the pleadings in court	10
(d) Erroneous statement of the issue by counsel for the appellants	11
(e) Assignments of error	11
2. The amount of the advance	13
3. Disadvantage to Cincinnati and the Middle West and advantage to New York and the East resulting from the application to to L. C. L. soap of the class 3 less 20 per cent (but not lower than class 4) rate	15
4. Changes in Official Classification	17
(a) The practical admission of reasonableness of former rate as applied to L. C. L. soap	18
5. Case relates only to common or laundry soap	19
6. Soap under Western and Southern classifications	20
7. Excuses for advance of classification and rate	21
(a) Prosperity of the business of the Proctor & Gamble Company	23
(b) Soap being profitable "can stand" an increased rate. Profit in traffic to shipper not to determine rate. How carrier legitimately shares prosperity of shipper	25, 26, 27
(c) Large allowances out of the rates to the Proctor & Gamble Company for terminal services of the Ivorydale and Mill Creek Valley Railway	28
(d) Complainants before Commission, Proctor & Gamble Company, not clean handed because of receipt of alleged rebates	32
(e) Increase of operating expenses of defendants. This increase the result largely of increase of business and has not prevented an increase of net earnings	34, 37
(f) How net earnings are applied	39
8. If the advance in rate was necessary to meet increased operating expenses, it should have been made on all traffic and not on a comparatively few articles	42
9. If it was proper to advance the rate on a few articles and not on all, soap, being an article of necessity and common use and of comparatively small value, should not have been selected	42

Page.

10. In advancing rates, the interest of the public as well as of the carrier is to be considered 44
11. Improved and extended facilities for handling traffic have lessened the cost to the carrier 46
12. Commission compelled to rely in these cases on the testimony of railway officials who are naturally biased witnesses. Conflicts in that testimony 46, 47, 48
13 The Commission an expert tribunal 49
14. Abandonment of increased expense of operation as ground for advance 51
15. Commission, in speaking of "relative rates," had in mind such rates as between C. L. soap and other articles of C. L. traffic or as between L. C. L. soap and other articles of L. C. L. traffic .. 51
    (*a*) The classification of C. L. soap does not control that of L. C. L. soap 53
    (*b*) Commission does not find that class 5 is the proper class for C. L. soap 53
    (*c*) No complaint made and no issue presented to the Commission as to the relation to be maintained between the classification of C. L. and L. C. L. soap 54
    (*d*) The question is whether the *increased* rate on L. C. L. soap is justifiable 54
16. If classification and rate of C. L. soap should control classification and rate of L. C. L. soap, the carriers furnish strong evidence in their classifications that C. L. soap being in class 5, L. C. L. soap should be in class 4 56
    (*a*) L. C. L. soap in class 4 for thirteen years, during a large part of which time C. L. soap was in class 5 56
    (*b*) 259 articles in Official Classification No. 20 classed 5 C. L. and classed 4 L. C. L 56, 57
    (*c*) Among these 259 articles there are a large number admitted to be analogous to soap L. C. L. in respect to convenience and cost of handling 57
17. Evidence of great expense in handling L. C. L. traffic *in general* does not show or tend to show that C. L. soap being in class 5, L. C. L. soap should be class 3 less 20 per cent 58
    (*a*) If excess of L. C. L. rates over C. L. rates is not sufficient to cover the extra cost of handling L. C. L. traffic, *that is as much proof that the C. L. rates are too high as that the L. C. L. rates are too low* 58
    (*b*) No satisfactory evidence as to the difference in expense of handling C. L. and L. C. L. soap or traffic in general 58
    (*c*) L. C. L. soap being above the average as to convenience of handling, is below the average as to expense of handling; therefore, evidence of the average expense of handling traffic in general can not indicate with any degree of accuracy the expense of handling L. C. L. soap 59, 60

Page.

18. Claim that L. C. L. rates on traffic in general are "inadequate" and that L. C. L. traffic in general is unremunerative..... 61
(a) No more ground for advancing the L. C. L. classification of soap than of any other L. C. L. traffic..... 61
(b) This being so, the advance in the rate of L. C. L. soap, without advancing the rates of other L. C. L. traffic, was an unjust discrimination against L. C. L. soap..... 61
19. The question, one of fact "peculiarly within the province of the Commission"..... 62
(a) Court below sustains the findings of fact of the Commission..... 62
(a) Where the Commission has duly investigated the facts and the court below has sustained the findings of the Commission on such investigation, those findings will not be set aside by the court except in a clear case of error..... 62
(a) The conclusions of the Commission, based on its findings of fact, *prima facie* correct..... 63
20. Appendix..... 65

AUTHORITIES CITED.

Where cited.	Page of argument.
I. C. C. *v.* C., N. O. & T. P. Ry. Co., 56 Fed. Rep., 934, 935	10
Same *v.* same, 64 Fed. Rep., 985	10
Same *v.* So. Pac. Co. et al., 123 Fed. Rep., 601	10
Shinkle & Co. *v.* L. & N. R. R. Co., 62 Fed. Rep., 693	10
Am. & Eng. Enc. of Law, Vol. XVII, 133	18
Smythe *v.* Ames, 169 U. S., 547	26, 44
I. C. C. *v.* So. Pac. Co. et al., 132 Fed. Rep., 829, 847	32
Covington & Lexington Turnpike Co. *v.* Sanford, 164 U. S., 596, 597	45
E. T., Va. & Ga. Ry. Co. et al. *v.* I. C. C., 99 Fed. Rep., 64	49
I. C. C. *v.* L. & N. R. R. Co., 118 Fed. Rep., 622	50
C., N. O. & T. P. Ry. Co. *v.* I. C. C., 162 U. S., 194	62
L. & N. R. R. Co. *v.* Behlmer, 175 U. S., 675	62
E. T., Va. & Ga. Ry. Co. *v.* I. C. C., 181 U. S., 27	62
I. C. C. *v.* L. & N. R. R. Co. et al., 102 Fed. Rep., 709	63
Yellow Pine Association *v.* Ill. Cent. R. R. Co. et al., 10 I. C. C. R., 505	40, 41

ABBREVIATIONS.

R., Record.
I. C. C., Interstate Commerce Commission
C. L., Carloads.
L. C. L., Less than carloads.
Com. Rep., Commission's Report setting forth its findings of fact.
Subdiv., Subdivision.
Test., testimony.

IN THE SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1906.

The Cincinnati, Hamilton and Dayton Railway Company et al., Appellants,
vs.
The Interstate Commerce Commission, Appellee.
No. 201.

ARGUMENT FOR APPELLEE.

I.

STATEMENT OF CASE.

This was a proceeding in equity instituted July 20, 1904, by the Interstate Commerce Commission (appellee) in the Circuit Court of the United States for the Southern District of Ohio under section 16 of the act to regulate commerce, as then amended, for the enforcement of an order of the Commission against the appellants, the Cincinnati, Hamilton and Dayton Railroad Company et al.

The order sought to be enforced was the result of an investigation by the appellee of a complaint made to it under section 13 of the act by the Procter & Gamble Company, a corporation under the laws of New Jersey, engaged in the manufacture and sale of soap, candles, and glycerine—principally soap—at Ivorydale and Cincinnati, Ohio, and being dependent on the appellants for the transportation of its products to various markets in Ohio and other States.

Classification.—The appellants operate, for the most part, in the territory known as "Official Classification territory," which, roughly speaking, embraces that portion of the United States east of the Mississippi River and Chicago and north of the Ohio and Potomac rivers. The carriers in this territory, including appellants, have, for the purpose of fixing or apportioning rates on the different articles of traffic, divided it into six general classes numbered from 1 to 6, both inclusive, known as the Official Classification. The rates decrease as the number of the class increases, being highest on class 1 and lowest on class 6.

Grounds of complaint before the Commission.—There were two principal grounds of complaint of the Procter & Gamble Company before the Commission; one, that the appellants, January 1, 1900, advanced the classification of common or laundry soap *per carload* from class 6 to class 5, and the other, that at the same time they advanced the classification *for less than carloads* from class 4 to class 3, and thereafter, March 10, 1900, made the rate on *less than carloads* class 3 less 20 per cent, but not lower than class 4.

Both of these changes of classification resulted in an advance of the rates and it was charged by the Procter & Gamble Company that the changes were unauthorized and that the resulting increased rates were unreasonable on both carload and less than carload common soap and subjected the traffic in common soap to an undue or unreasonable prejudice or disadvantage in violation of the act to regulate commerce. (R., 10–12.)

(NOTE.—The initial letters, C. L., will hereinafter be used for carloads and L. C. L. for less than carloads.)

Finding and order of the Commission.—The Commission, after due investigation, found that the change of classification of C. L. soap from class 6 to class 5 was not unreasonable and dismissed the complaint as to that charge; but it sustained the charge as to the change in classification of L. C. L. soap from class 4 to class 3 less 20 per cent, and held that this classification of L. C. L. soap was unjust and resulted in an unreasonable rate. In pursuance of this finding the Commission issued the order involved in this case which required the appellants to "*cease and desist, on or before June 15, 1903, from charging or receiving for the transportation of common or laundry soap in less than carload quantities a rate per hundred pounds equal to 20 per cent less than the third-class rate.*" (R., 83.)

The Circuit Court rendered a decree for the enforcement of this order and the case is in this court on appeal from that decree.

II.

THE ISSUE PRESENTED IN THE CASE IN COURT.

The proceeding in court for the enforcement of the order being *de novo* (I. C. C. *v.* C., N. O. & T. P. Ry. Co., 56 Fed. Rep., 934, 935; Same *v.* C., N. O. & T. P. Ry. Co., 64 Fed. Rep., 985; Same *v.* So. Pac. Co. et al., 123 Fed. Rep., 601; Shinkle, &c. Co. *v.* L. & N. R. R. Co., 62 Fed. Rep., 693), it was commenced as an independent suit by a petition or bill of complaint filed by the Commission, in Paragraph IX of which it is alleged:

That the action of the defendants (appellants) in raising the classification of common or laundry soap L. C. L. from class 4 to class 3 less 20 per cent, resulted in unreasonable and unjust rates in violation of section 1 of the act to regulate commerce, and also in an undue and unreasonable preference or advantage and in an undue prejudice or disadvantage in violation of section 3 of that act. (R., 4.)

These allegations are traversed by the appellants in their answers filed in court.

The question is whether the order of the Commission is a "lawful order" and this depends upon whether the advanced rate on L. C. L. common soap is in violation of either section 1 or section 3, or both those sections, of the act to regulate commerce. The

provisions of those sections which are material in this case are as follows:

SECTION 1. "All charges made for any service rendered or to be rendered in the transportation of passengers or property * * * shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

SECTION 3. "It shall be unlawful for any common carrier subject to the provisions of this act * * * to subject * * * any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatever."

Erroneous statement of the issue by counsel for the appellants.

Counsel for the appellants contend that the only question in the case is as to the *relative* reasonableness of the advanced C. L. and L. C. L. rates. In this they are mistaken. The real issue is as to the reasonableness or lawfulness of the *increased* rates on L. C. L. soap in themselves and as compared with the rates [redacted] of L. C. L. traffic, as is shown in subdivisions XIX and XX, pp. 51, 53 of this argument.

Assignments of error.—There are four assignments of error. The first, second, and fourth are general, alleging that the court erred in not holding that the order of the Commission "was not a lawful order" and in not holding that "classification of common or laundry soap in less than carload lots at 20 per cent less than third class does not violate the act to regulate commerce and does not result in an unjust and unreasonable charge for the service performed, and does not subject any particular description of traffic to any undue or unreasonable prejudice or disadvantage."

The following is the only specific assignment of error:

"3. That this court" (circuit court) "erred in holding—

"a. That the classification of soap in less than carload lots is not controlled by classification of soap in carload lots.

"b. That the classification of soap at 20 per cent less than third class is unlawful, even if such classification should be based upon its relation to other articles for carriage in less than carload lots." (R., 1095.)

III.

THE AMOUNT OF THE ADVANCE.

The rate from Chicago to New York is the basis of rates from Official Classification Territory to the east. The Chicago rate is taken as 100 per cent, and rates from shorter or longer distance points are made certain percentages of the Chicago rate, being greater or less in proportion to the length of the hauls. The Chicago rate to New York on L. C. L. soap under the classification (class 4) in force before the advance was 35 cents per hundred pounds, and under the advanced classification (class 3, less 20 per cent) it is 40 cents per 100 pounds, being an increase of 5 cents per hundred pounds. The average advance from all points is found by the Commission to be about 3 cents per hundred pounds. (R., 56.)

The Commission estimates the total annual output of the Procter & Gamble Company at 100,000,000 pounds and the proportion of that hauled L. C. L. at 35 per cent, or 35,000,000 pounds. (R., 56.) An average advance on this of 3 cents per hundred pounds yields the road an additional revenue of $10,500, and reduces the revenue of the Procter & Gamble Company to the same extent.

This in itself is a material amount, but it is to be borne in mind that the advance in the rate applies to all the soap manufacturers and shippers in Official Classification Territory as well as to the Procter & Gamble Company. The case being a proceeding by

the Interstate Commerce Commission in the interest of the public and not by, or in the interest of, any one shipper, and involving an advance in soap rates throughout Official Classification Territory, it is the aggregate tax on all shippers of soap and on the soap traffic and soap consumers throughout that territory that is to be considered and not, as contended by counsel, the small amount of the advance on a single cake of soap used by a single consumer.

The manufacture of soap is carried on in all parts of Official Classification Territory. The Commission finds:

"Common soap for laundry and other household purposes is produced in practically all sections of the United States. * * * There are numerous large common soap factories located in various cities throughout Official Classification Territory, the product of which is sold under advertised names and shipped to jobbers who supply the retail trade generally in different sections of the country, or, as in the case of the complainant, in all parts of the United States." (R., 54.)

IV.

THE DISADVANTAGE TO CINCINNATI AND THE MIDDLE WEST AND ADVANTAGE TO NEW YORK AND THE EAST RESULTING FROM THE APPLICATION TO L. C. L. SOAP OF THE CLASS 3 LESS 20 PER CENT (BUT NOT LOWER THAN CLASS 4) RATE.

The attention of the court is called to the following findings of the Commission set forth in its report in respect to the above-named matters:

"The fourth-class rate from Cincinnati to Boston is 34½ cents and the 20 per cent less than third-class rate between the same points is 38½ cents, indicating an increase of 4 cents in the less than carload rate from Cincinnati to Boston. The rate from New York to Boston is 19 cents, fourth class, and 20 per cent less than third class, but not below fourth class, also gives a rate of 19 cents, showing no advance over fourth class from New York to Boston. These differences are due to variations in the scales of rates prevailing in different sections. * * * When, for example, under the application of that rule, the rate from Cincinnati to Boston is increased 4 cents and the rate from New York to Boston remains the same as compared with the fourth-class rates formerly in effect, it is plain that this method of determining rates upon the percentage basis operates unequally upon the different shippers of less than carload quantities in that territory." (R., 72.)

"The new class inserted in the Official Classification on March 10, 1900, whereby 20 per cent less than third-class but not lower than fourth-class rates are provided for less than carload soap and numerous

other articles, operates with respect of soap, as above found in this case, to increase materially the rates paid by complainant and others in the section of country about Cincinnati, and presumably the rates paid by other shippers in most parts of the Central West, while it advances in less degree or not at all the less than carload rates paid by soap shippers in New York City and other parts of the East." (R., 82.)

V.

CHANGES IN OFFICIAL CLASSIFICATION.

The first official classification (called official because applied to Official Classification Territory), Classification No. 1, was made April 1, 1887. From that time up to January 1, 1900, there were nineteen different classifications, established by committees composed of expert railway officials—the classification then put in force being Classification No. 20. While in those nineteen classifications soap C. L. has been sometimes in class 5 and sometimes in class 6, soap L. C. L. was placed in class 4 continuously from the first classification, April 1, 1887, up to Classification 20, January 1, 1900.

The following table shows the changes in classification of soap:

	Carloads (C. L.).	Less than carloads (L. C. L.).
April 1, 1887	Class 5	Class 4.
June 22, 1891. By order of Commission.	Class 6	Do.
January 1, 1895	Class 5	Do.
January 15, 1895	Class 6	Do.
January 1, 1900	Class 5	Class 3.
March 10, 1900	Class 5	20 per cent less than class 3, but not lower than class 4.

(R., 69.)

It thus appears that for a period of thirteen years, extending from the first classification to January 1, 1900, the defendants voluntarily gave common soap L. C. L. the class 4 rate.

20562—07——2

Practical admission of reasonableness of former rate as applied to less than carload soap.

It is well settled that a carrier by putting in force a rate practically admits that the rate is profitable, and this admission acquires greater force when the rate is long maintained.

In American and English Encyclopedia of Law, Vol. XVII, page 133, it is said:

"Where an advance is made in rates which have been long maintained and the evidence shows that the traffic affected is large and important and constantly increasing, the advance will be held unjust unless it is satisfactorily explained."

The findings of fact by the Commission, as set forth in its report on a case investigated by it, are made by the law *prima facie* evidence of those facts (secs. 14 and 16, act to regulate commerce). The Commission in its report in this case finds that—

"Soap in less than carloads always had fourth-class rates until January 1, 1900. The presumption that such rates are reasonable arises from the voluntary action of the carriers in keeping those rates in effect during such a long period; and that presumption has not been overcome, in our judgment, by the evidence presented in this case." (R., 82.)

In the opinion of the court below it is said:

"Common soap in less than carload lots was assigned to the fourth class in the first classification made under the act to regulate commerce and remained there until the reclassification complained of (January 1, 1900), and did not follow the variations of soap in carload lots; and the replacing of soap in carloads in the fifth class did not justify the displacing of soap in less than carloads from the class *in which it had been voluntarily maintained by the defendants for more than thirteen years.*"

(R., bot. p. 1091, top p. 1092.)

Case Relates only to Common or Laundry Soap.

It is important that it be borne in mind that this case relates solely to *Common or Laundry soap*, and not to "fancy, toilet, and castile soap." The latter L. C. L. was placed in class 2 from April 1, 1887, to September 1, 1891, while the former remained in class 4.

(Test. Gill, R., 238.)

VI.

SOAP UNDER WESTERN AND SOUTHERN CLASSIFICATIONS.

The proposition that soap L. C. L. should be given a classification and rate not higher than the class 4 classification and rate is supported by the soap classification and rate under both the Western and Southern classifications.

Under the Western Classification, which is applied to territory west of the Mississippi River and Chicago, soap is placed in *class 5 C. L. and class 4 L. C. L.*

In the Southern Classification, which prevails in territory east of the Mississippi and south of the Ohio and Potomac rivers, soap in any quantity is given a low classification, namely, *class 6.* (R., 53, 54.)

VII.

EXCUSES OR GROUNDS FOR THE ADVANCE IN CLASSIFICATION AND RATE.

The appellants, realizing that the burden was upon them to justify or satisfactorily explain the advance in a classification and rate which they had maintained for thirteen years, set up on the hearing before the Commission a number of excuses or grounds for the advance.

These excuses appear to be practically abandoned in the case in court. Their manifest insufficiency tends strongly to show that the advance is without justification, *the presumption being that if the carriers had had valid excuses they would have offered them in the first instance.*

These excuses are—

1. The great profit there is in the business of the Procter & Gamble Company.

2. Soap being profitable, could "stand" an increased rate.

3. Large allowances out of the rate to the Procter & Gamble Company for the services at Ivorydale of the terminal railway owned by that company.

4. Acceptance of alleged rebates by the Procter & Gamble Company from the defendant carriers.

5. Increase of operating expenses of the defendant carriers.

These excuses will be considered in the order named.

The main contention in behalf of the carriers *now* seems to be that the court below erred in holding that the classification of soap L. C. L. was not controlled by that of soap C. L., and in not holding that, soap C. L. being in class 5, soap L. C. L. should be in class 3, less 20 per cent.

(See 3d assignment of error, Subdiv. II, p. 11, *ante*.)

These propositions are discussed at length in Subdivisions XIX, XX, XXI, XXII, XVIII, pp. 51–60, of this argument.

VIII.

THE PROFITABLE CHARACTER OF THE BUSINESS OF THE PROCTER & GAMBLE COMPANY.

In the first place, it was contended that the advance was justified because of the great profit there was in the business of the Procter & Gamble Company. It will be found on examination of the record that a large part of the voluminous testimony introduced by the defendants was for the purpose of sustaining this contention.

It is conceded that the *entire* business of the Procter & Gamble Company has yielded large profits, and the Commission finds in its report and opinion that "the business of the Procter & Gamble Company, *as a whole*, has been, and is, extremely profitable." (R., 48.)

The business of the Procter & Gamble Company, however, *as a whole*, embraces the manufacture not only of common or laundry soap, which is the only soap the classification and rate of which is involved in this case, but also the manufacture of candles and glycerine, and of Ivory soap, used for toilet purposes. The large profits of the business of the Procter & Gamble Company are derived from the manufacture of these other articles, as well as from common or laundry soap, and the profits on the latter are far less than those on the higher grades of toilet soap. The evidence does not show that the manufacture of common or laundry soap is exceptionally profitable. (R., 48.)

In the next place, it is to be borne in mind that the order of the Commission, and consequently this case, relate to the advance in the classification and rate on common soap, not only as it affects the Procter & Gamble Company, but also as it affects all shippers and manufacturers in the Official Classification Territory. The manufacture of soap is carried on in almost every town of importance throughout that territory. (R., 54.)

There is no proof that the business of all these soap manufacturers and shippers is exceptionally profitable (R., bottom p. 56) and, certainly, the great profit in the business of the Procter & Gamble Company is no ground or justification for an advance in the classification and rate of the soap of other manufacturers and shippers.

IX.

CONTENTION THAT ADVANCE WAS JUSTIFIABLE BECAUSE SOAP, BEING PROFITABLE, COULD "STAND" AN INCREASED RATE.

Another justification set up for the advance is that soap will "stand" an increased rate.

The idea seems to be prevalent among railway officials and their counsel that carriers have a right to charge *all that the traffic will "stand" or "bear;"* in other words, that any rate is reasonable under which the traffic will move to market or which is not prohibitory of such movement. On page 5 of the printed argument filed before the Commission in behalf of the Baltimore and Ohio and the Baltimore and Ohio Southwestern roads, it is said:

"If there is any business in the country that is pecuniarily able to *stand* an increase in transportation rates, that business is the manufacture of soap."

The proposition that a common carrier has the right to exact any rate which the traffic will "stand," or under which it will move, is mainfestly erroneous. There is a large margin between a reasonable rate and a prohibitory rate, or rate under which the traffic will not move. Traffic will move under excessive rates until they reach the point of being absolutely prohibitory. For example, a carload of produce may yield the shipper under a rate reasonably compensatory to the carrier a net profit of $100 in the market to which it is shipped, but under the rate charged it may yield

only $50 net profit, yet the shipper will ship and the traffic will move under the latter rate, inasmuch as a half loaf is better than no loaf or some profit is better than no profit at all.

This assumption that any rate is reasonable under which the traffic will move is in direct conflict with the rule laid down by this court in *Smythe* v. *Ames* (169 U. S., p. 547), where it is said, "the public is entitled to demand that no more be exacted from it for the use of a public highway than the services rendered are reasonably worth."

Under this rule the test of the reasonableness of a rate is not whether the traffic, because of the great profit there is in it to the producer or shipper, can stand or will move under the rate, but whether the rate yields a reasonable compensation for the service rendered by the carrier.

Profit to shipper in traffic not to determine rate.

If the prosperity of the business of the shipper is to have a controlling influence in fixing a rate, that would justify a higher rate on the traffic of the prosperous shipper than on that of one less prosperous, and there could be no uniformity of rates.

To give the carrier the right to participate in the prosperity of the shipper *by raising rates* is simply to license the carrier to appropriate *pro tanto* that prosperity or, in other words, to transfer the shipper's legitimate profit in his business from the shipper to the carrier.

If the rate is to be advanced when the shipper's profits increase, it should be reduced when they fall off. There is, so far as I know, no instance of a reduction on that ground.

The shipper has as much right to share *by a reduction in rates* in the prosperity of the carrier as the carrier has to share *by an advance in rates* in the prosperity of the shipper. The proof shows that the business of the defendants has phenomenally increased, both before and since the advance in classification of soap.

See Subdivision XII, pp. 35, 36, of this argument.

The contention that the advance in classification and rate was justified because of the great profits in the business of the Procter & Gamble Company is consistent with the idea that the rates *minus* the advance were in *themselves* reasonably remunerative.

How carrier legitimately shares prosperity of shipper.

The increased prosperity of shippers along the line of a railway enlarges the volume of business of those shippers, both incoming and outgoing, and consequently increases the business or the tonnage of traffic hauled by the carrier, and in this way the carrier necessarily and *legitimately* participates in, or is benefited by, the prosperity of the shipper.

X.

IT WAS FURTHER CONTENDED THAT LARGE ALLOWANCES OUT OF THE RATES TO THE PROCTER & GAMBLE COMPANY FOR THE TERMINAL SERVICES OF THE IVORYDALE AND MILL CREEK VALLEY RAILWAY COMPANY JUSTIFY THE ADVANCE IN CLASSIFICATION AND RATE.

The three initial and delivering lines for the traffic of the Procter & Gamble Company from and to Ivorydale are defendants—the Cincinnati, Hamilton and Dayton, the Baltimore and Ohio Southwestern, and the Cleveland, Cincinnati, Chicago and St. Louis railways. The stations of these roads are from 2,000 feet to a half mile distant from the soap factories of the Procter & Gamble Company at Ivorydale, and they are connected with those factories by the tracks of the *Ivorydale and Mill Creek Valley Railway*, which is owned and operated as a terminal railway by the Procter & Gamble Company. This railway has about six miles of track and performs terminal services, including the hauls to and from its points of connection with the roads of these three appellants, the loading and unloading of the freight, storage, and everything connected with the inbound and outbound terminal service.

For this service these three defendants and also the Erie Railroad Company, which has a trackage arrangement to Ivorydale over the line of the Cincinnati, Hamilton and Dayton Railway Company, make to the Procter & Gamble Company certain allowances out of the rate charged them.

It is contended in behalf of the appellants that these allowances are largely in excess of the value of such services; that they amount to rebates on the rate charged the Procter & Gamble Company for the transportation of its soap to market; that it is also an unjust discrimination in favor of the Procter & Gamble Company, and that this justifies the advance in the classification and rate of common soap complained of in this case. A large amount of the testimony of the appellants and much of their argument before the Commission are devoted to this contention.

(As to whether the allowances are, in fact, too liberal, the Commission holds that the evidence does not show, "considering all the services rendered by the Ivorydale and Mill Creek Valley Railway Company." (R., 60.) The details as to the services of this Ivorydale and Mill Creek Valley Railway Company and the allowances received therefor by the Procter & Gamble Company are set forth in the report and opinion of the Commission (R., 58, 59), and it is unnecessary to state them here.)

In the printed argument filed for the Baltimore and Ohio Southwestern Railroad Company and the Baltimore and Ohio Railroad Company before the Commission it is said:

"These allowances" (for terminal servces of the Ivorydale Railway) "give the Procter & Gamble Company a great advantage over all their competitors." (Page 11.)

And again:

"It being shown that the present increase to the Procter & Gamble Company in freight on soap is not as much as the price paid by the railroads for the business" (meaning the price paid the Procter & Gamble Company for the terminal services of the Ivorydale Railway Company), "it is clear that complainant suffers no pecuniary injury from this raise in the rates." (Page 19.)

And again:

"Our claim is that all of these earnings" (of the Ivorydale Railway Company) "represent rebates or allowances to the Procter & Gamble Company, and that their claim of representing terminal charges is a sham." (Page 12.)

Appellants set up their own violation of law in justification of the advance.

As these allowances for the services of the terminal railway are paid to the Procter & Gamble Company by the appellants, who reach Ivorydale, they occupy the attitude of claiming that, because of rebates paid by them to, and unjust discrimination practiced by them in favor of, the Procter & Gamble Company they are entitled to advance the classification and rate. They set up their own alleged wrong or violation of law in justification of this advance. With one hand they pay rebates, as they allege, to the Procter & Gamble Company, and with the other hand withdraw those rebates by an advance in classification and rate.

By the advance the appellants are seeking to indirectly nullify a contract.

The allowances made by the defendants for the services of the terminal railway are made under a contract signed by themselves and the Procter & Gamble Company and entered into, as stated in the printed argument filed in behalf of defendants (the B. & O. S. W. and the B. & O. R. R. companies), for the purpose of securing the business of the Procter & Gamble Company. (R., 58–60.) The appellants are, therefore, claiming the right by an advance in classification and rate to nullify a contract into which they have deliberately entered with the Procter & Gamble Company, based on a valuable consideration.

The appellants punish all shippers of soap in Official Classification Territory because of the alleged rebates paid by them to the Procter & Gamble Company alone.

The advance in the classification and rate being general and applicable to all shippers of soap throughout Official Classification Territory, the appellants are claiming because of their alleged rebates to and unjust discrimination in favor of the Procter & Gamble Company, the right to advance the classification and rate not only on the soap of that company but on that of all these other shippers. These other shippers, who are innocent and clean handed, are punished by the defendants for the alleged joint transgressions of the appellants and the Procter & Gamble Company.

The plea that the advance was justified because of rebates paid the Procter & Gamble Company out of the rates is an admission that the rates *in themselves* in the absence of the rebates would be reasonably remunerative.

XI.

CONTENTION THAT, BECAUSE THE COMPLAINANT BEFORE THE COMMISSION, THE PROCTER & GAMBLE COMPANY, RECEIVED ALLEGED REBATES AND DID NOT FOR THAT REASON COME BEFORE THE COMMISSION CLEAN HANDED, THE PROCEEDING IN COURT BY THE INTERSTATE COMMERCE COMMISSION AS COMPLAINANT SHOULD NOT BE SUSTAINED.

In the printed argument filed before the Commission by the Baltimore and Ohio and the Baltimore and Ohio Southwestern roads it is further said:

"The Procter & Gamble Company, enjoying these discriminatory advantages, should be affected in this proceeding by the rule which requires that complainant must come into court with a clean conscience. (See observations of Chief Justice Marshall in *Mason* v. *Ship Blaireau*, 2 Cranch., 185, et seq.)"

(Page 19, argument for B. & O. S. W. and B. & O. R. R. Co.)

This shows the grave error into which the appellants' counsel have fallen in treating this case as a personal suit involving only the private rights of the Procter & Gamble Company. A proceeding in court like the present by the Interstate Commerce Commission for the enforcement of an order is not a private or personal suit, but a suit for the enforcement of a public duty.

In *Interstate Commerce Commission* v. *The Southern Pacific Company et al.* (132 Fed., Rep., 829), there was involved an order of the Commission forbidding the enforcement by defendants therein of a rule

whereby they reserved to themselves, as initial carriers, the right of routing citrus fruit traffic beyond their own lines and denied this privilege to the shippers. The defendant railway companies contended that, even if the rule were unlawful, the complainants (shippers) were not entitled to relief, because they had used the privilege of routing for the unlawful purpose of securing rebates and desired to retain it for that purpose. In overruling this contention the court says:

"With reference to defendants' contention that the complainants before the Interstate Commerce Commission were there with unclean hands, it is only necessary to say that in this court the Commission represents the public at large, and therefore no participation by said complainants in the unlawful practice of rebates could bar relief."
(132 Fed. Rep., 847.)

In the present case the order of the Commission sought to be enforced is in the interest of the public; it applies to the rates charged all shippers throughout the Official Classification Territory, as well as the rates charged the Procter & Gamble Company. The public interested includes consignees, consumers, and others, as well as shippers or manufacturers.

XII.

INCREASE OF OPERATING EXPENSES OF DEFENDANTS IS THE RESULT, FOR THE MOST PART, OF INCREASE IN THEIR BUSINESS.

It was also urged in behalf of the appellants that the advance in classification and rate was justified, if not necessitated, by an increase in their operating expenses, resulting from higher wages paid their employees and higher prices of the material and equipment used by them. The proof shows increases in wages and in the prices of material and equipment, and these increases have added to operating expenses, but the total increases in those expenses are due only in part to the advances in wages and prices of supplies and equipment. They are attributable in a great measure to the constant growth or enlargement of the business of the roads. The greater the volume of business the greater is the aggregate cost of conducting it, or, in other words, of operating the roads.

This is a self-evident proposition and requires no proof to sustain it. It is admitted by all the railroad officials questioned on the subject that the great increase in business has resulted in an increase in the aggregate amount paid in wages and salaries and also in the amount necessarily expended on terminal and other facilities for handling the increased traffic.

C. T. Scaife, local freight agent of the Illinois Central Railroad at Chicago. (R., 229.)

C. E. Gill, chairman Official Classification Committee. (R., 249.)

Some idea of the increase in the freight business of the appellants may be obtained from the tables below:

From annual reports of the companies named for the years ending June 30, 1895 and 1899.

Name of road.	Total freight tonnage.		
	1895.	1899.	Increase, 1899 over 1895.
Cincinnati, Hamilton and Dayton Rwy. (or R. R.) Co.	3, 959, 038	4, 442, 474	483, 436
Pittsburg, Cincinnati, Chicago and St. Louis Rwy. Co.	14, 308, 189	19, 409, 527	5, 101, 338
Pennsylvania R. R. Co.	55, 625, 107	69, 566, 877	13, 941, 770
Cleveland, Cincinnati, Chicago and St. Louis Rwy. Co.	8, 625, 073	10, 043, 126	1, 418, 053
Lake Shore and Michigan Southern Rwy. Co.	13, 214, 833	16, 623, 247	3, 408, 414
New York Central and Hudson River R. R. Co.	19, 741, 495	25, 356, 474	5, 614, 979
Baltimore and Ohio Southwestern Rwy. Co.	3, 678, 036	4, 435, 035	756, 999
Baltimore and Ohio R. R. Co.	16, 080, 423	25, 057, 178	8, 976, 755
Total	135, 232, 194	174, 933, 938	39, 701, 744

(R., 213, 214.)

The foregoing table gives the increase in the tonnage of traffic from 1895 to 1899, the period immediately preceding the advance in classification and rate. The growth of the business of the appellants

from 1899 to 1904, both inclusive, is shown in the table following:

From annual reports of the companies named for the years ending June 30, 1899 and 1904.

Name of road.	Total freight tonnage.		
	1899.	1904.	Increase, 1904 over 1899.
Cincinnati, Hamilton and Dayton Rwy. Co	4,442,474	6,107,628	1,665,154
Pittsburg, Cincinnati, Chicago and St. Louis Rwy. Co	19,409,527	29,616,716	10,207,189
Pennsylvania R. R. Co	69,566,877	98,098,025	28,531,148
Cleveland, Cincinnati, Chicago and St. Louis Rwy. Co	10,043,126	12,510,586	2,467,460
Lake Shore and Michigan Southern Rwy. Co	16,623,247	25,920,421	9,297,174
New York Central and Hudson River R. R. Co	25,356,474	36,379,655	11,023,181
Baltimore and Ohio Southwestern Rwy. Co	4,435,035	(a)	.....
Baltimore and Ohio R. R. Co	25,057,178	43,347,193	18,290,015
Total	174,933,938	251,980,224	81,481,321

a Included in report of Baltimore and Ohio R. R. Co.

(R., 213, 214.)

The rate per 100 pounds or per ton on large quantities of traffic is, as a rule, less than on smaller quantities. This is illustrated by the fact that the rates in Official Classification Territory and in Eastern Territory are much lower than in Southern Territory, because of the greater density of population, and, consequently, greater tonnage of traffic in the first two territories than in the last named. *The more traffic a road has to haul the lower the rate it can afford to haul it for.*

XIII.

THE INCREASE IN BUSINESS HAS RESULTED IN LARGER NET AS WELL AS GROSS EARNINGS.

While the operating expenses of the appellants have grown from the causes stated, the increased business has naturally resulted in an increase in earnings from operation. In the language of one of the witnesses for the appellants, "the more business you handle the more money you get as a total."

C. T. Scaife, R., 229.

Not only has there been an increase in the gross earnings, but also in the NET earnings of nearly all the defendants, as shown in the tables below:

From annual reports of the companies named, for the years ending June 30, 1895 and 1899.

Name of road.	Net earnings.		
	1895.	1899.	Increase, 1899 over 1895.
Cincinnati, Hamilton and Dayton Rwy. (or R. R.) Co.....	$1,630,414	$1,588,743	[a] $41,671
Pittsburg, Cincinnati, Chicago and St. Louis Rwy. Co.....	5,241,592	6,495,180	1,253,588
Pennsylvania R. R. Co.....	19,703,771	21,093,608	1,389,837
Cleveland, Cincinnati, Chicago and St. Louis Rwy. Co.....	3,707,686	4,482,738	775,052
Lake Shore and Michigan Southern Rwy. Co.....	7,101,308	7,747,633	646,325
New York Central and Hudson River R. R. Co.....	14,568,642	17,074,611	2,505,969
Baltimore and Ohio Southwestern Rwy. Co.....	2,305,932	1,857,728	[a] 448,204
Baltimore and Ohio R. R.Co....	6,822,878	6,425,008	[a] 397,870
Total.....	61,142,223	66,765,249	[b] 5,683,026

[a] Decrease. [b] Net increase.

The above table gives the increase in net earnings from 1895 to 1899, the period immediately preceding the advance in classification and rate. The following table shows the increase in *net* earnings of *all* the defendants from 1899 to 1904, both inclusive:

From annual reports of the companies named, for the years ending June 30, 1899 and 1904.

Name of road.	Net earnings.		
	1899.	1904.	Increase, 1904 over 1899.
Cincinnati, Hamilton and Dayton Rwy. Co	$1,588,743	$1,782,282	$193,539
Pittsburg, Cincinnati, Chicago and St. Louis Rwy. Co	6,495,180	7,309,260	814,080
Pennsylvania R. R. Co	21,093,608	35,478,335	14,384,727
Cleveland, Cincinnati, Chicago and St. Louis Rwy. Co	4,482,738	5,036,352	553,614
Lake Shore and Michigan Southern Rwy. Co	7,747,633	7,979,096	231,463
New York Central and Hudson River R. R. Co	17,074,611	21,929,425	4,854,814
Baltimore and Ohio Southwestern Rwy. Co	1,857,728	(a)	.....
Baltimore and Ohio R. R. Co	6,425,008	21,442,217	15,017,209
Total	66,765,249	100,956,967	36,049,446

a Included in report of Baltimore and Ohio R. R. Co.

An increase in the operating expenses of a carrier is no excuse for an advance in the rate charged the public so long as the NET *earnings of the carrier continue to increase.*

MOREOVER, *the operating expenses of soap manufactures have been increased* by advances in the wages paid by them for labor and also by advances in the prices of material used by them. These advances have not affected the carriers alone. (R. 55.)

XIV.

STATEMENT THAT A LARGE PART OF THE NET EARNINGS ARE EXPENDED FOR PERMANENT IMPROVEMENTS.

It is asserted by counsel for carriers that a large part of the "net earnings" shown in the last two tables in the preceding subdivision of this argument were expended for permanent improvements or betterments in the shape of new and larger depots, etc., and it is claimed that "a statement which stops with net earnings and does not show how the net earnings are applied, proves nothing."

We submit that, if the application of these net earnings was material, the burden was upon the carriers to show that application and to *what extent*, if any, they have been applied to permanent improvements or betterments and to *what extent* to dividends.

Moreover, if it be true that a large amount of these net earnings have been expended in permanent improvements, that is no answer to our contention that "an increase in the operating expenses of the carrier is no excuse for an advance in the rate *charged the public* so long as the net earnings of the carrier continue to increase."

Permanent improvements add to the capital or wealth, as well as earning capacity, of the roads, and in the long run benefit stockholders by increasing their dividends. Earnings invested in permanent improvements are in a sense profits.

In any event, as held by this court in *Smythe* v. *Ames*, a carrier can exact from the public "no more than the services rendered are reasonably worth," whether its earnings be appropriated to permanent improvements or to dividends.

Smythe *v.* Ames, 169 U. S., p. 547.

Net Earnings Paid Dividends.

Notwithstanding the fact, if it be a fact, as claimed by counsel for the appellants, that the net earnings are largely appropriated for extensive permanent improvements, they also paid dividends before the advance in the classification and rate on soap, and still pay dividends. This is shown by the annual reports filed with the Commission by the appellants. For the year preceding the advance in classification, 1899, the appellant roads named below reported the payment of dividends, as follows:

Cincinnati, Hamilton and Dayton Railway	$380,340.14
Pittsburg, Cincinnati, Chicago and St. Louis Rwy	340,248.00
Pennsylvania Railroad Company	6,465,252.50
Cleveland, Cincinnati, Chicago and St. Louis Rwy	525,731.00
New York Central and Hudson River Railroad	4,000,000.00

Expenditures for Permanent Improvements Included in Operating Expenses.

The reports of the carriers also show that large expenditures for permanent improvements are included in operating expenses. The justice or propriety of this is, to say the least, questionable. In Central Yellow Pine Association *v.* The Illinois Central R. R. Co. et al., the Commission said:

"It is to be noted that these operating expenses embrace large annual expenditures for real estate, right of way, tunnels, bridges, and other strictly permanent improvements and also for equipment, such

as locomotives and cars. While payments for repairs, whether applied to permanent improvements or equipment, are properly chargeable to current annual operating expenses, this would not appear to be the case as to the improvements or equipment themselves—the former being permanent and the latter lasting for many years. The expenditures for permanent improvements and for equipment made in a single year may obviate the necessity for like expenditures or expenditures to the same extent for many years to come, and the extraordinary amount of such expenditures made by the defendants in a few years preceding and including the year of the advance in rate indicates that they will not be required again for a long period of time. They should not therefore be taxed as part of the current or operating expenses of a single year, but should be, so far as practicable and *so far as rates exacted from the public* are concerned, "projected proportionately over the future."

(10 I. C. C. R., 505.)

XV.

IF THE ADVANCE IN RATE WAS NECESSARY TO MEET INCREASED OPERATING EXPENSES, IT SHOULD HAVE BEEN MADE ON ALL TRAFFIC AND NOT ON A COMPARATIVELY FEW ARTICLES.

Conceding, for argument's sake, that an advance in rates was necessary to enable appellants to earn more revenue to meet increased operating expenses, we contend, *in the first place*, that that advance should have been general and not on a comparatively few articles of traffic. This is manifestly just, because, if there was an increase in the cost of construction, maintenance, and operation, that increased cost was necessary for or was incurred in the transportation of all traffic and not the transportation of any particular article of traffic. Moreover, if such increased cost had been distributed or been met by an advance in rates on all traffic, the advance on a single article would have been so small as not to have been a burden.

If it was Proper to Advance the Rate on a Few Articles and not on All, Soap, being an Article of Necessity and Common Use and of Comparatively Small Value, should not have been selected.

In the *next place*, conceding an advance was necessary and that it was properly made to apply to some and not to all articles of traffic, the question arises whether soap should have been selected as one of the articles the rate and classification of which should have been advanced. The advance, we contend,

should have been made on luxuries and traffic of great value and not on articles of necessity and general use, but of comparatively small value, like common soap. Soap is essential to cleanliness, and we have scriptural authority for the proposition that cleanliness is akin to godliness. From a moral as well as a sanitary standpoint, an article like soap should be one of the last selected for an advance in rates.

XVI.

IN ADVANCING RATES THE INTERESTS OF THE PUBLIC, AS WELL AS OF THE CARRIER, ARE TO BE CONSIDERED.

The plea that an advance in the soap rate was properly made because of a need of an increase of revenue has regard rather to the interest of the carrier than of the public.

Common carriers are in a sense creatures of the public; they derive their franchises or, in the language of this Court, "their right to exist," from the public; and the consideration upon which those franchises are granted is the benefit the public has a right to expect from the building and operation of railways.

"A railroad corporation has a public duty to perform as well as a private interest to subserve, and the courts should not permit the abandonment of the one for the promotion of the other."

In *Smythe* v. *Ames* (169 U. S., 544) this Court held that a proposition advanced by counsel was unsound in that, in the language of the court, it—

"Omitted altogether any consideration of the right of the public to be exempt from unreasonable exactions, and makes the interests of *the corporation maintaining a public highway the sole test in determining whether the rates established by or for it are such as may be rightfully prescribed between it and the public.*"

The court further says, in this connection:

"A railroad is a public highway, and none the less so because constructed and maintained through the

agency of a corporation deriving its existence and powers from the State. Such a corporation was created for public purposes. It performs a function of the State. Its authority to exercise the right of eminent domain and to charge tolls is given primarily for the benefit of the public. * * * *It can not, therefore, be admitted that a railroad corporation maintaining a highway under the authority of the State may fix its rates with a view solely to its own interests and ignore the rights of the public.*"

The court then cites *Covington and Lexington Turnpike Company* v. *Sanford* (164 U. S., 596, 597), and makes the following quotation from the opinion in that case:

"It can not be said that a corporation is entitled, as of right, and *without reference to the interests of the public*, to realize a given per cent upon its capital stock. When the question arises whether the legislature has exceeded its constitutional power in prescribing rates to be charged by a corporation controlling a public highway, *stockholders are not the only persons whose rights or interests are to be considered. The rights of the public are not to be ignored.* It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders. But that involves an inquiry as to what is reasonable and just for the public. * * * The public can not properly be subjected to unreasonable rates *in order simply that stockholders may earn dividends* * * *."

It is particularly essential that carriers should have due regard to the interests of the public in advancing the classification and rate on such an article as soap, which, as before said, is, or should be, an article of universal use and which is not only necessary for purposes of sanitation but is also conducive to good morals.

XVII.

IMPROVED AND EXTENDED FACILITIES FOR HANDLING TRAFFIC HAVE LESSENED THE COST TO THE CARRIER.

Witnesses for the carriers testify that the facilities for handling freight have been greatly enlarged, as well as improved in character. The natural tendency and effect of this must be in the direction of lessening the expense to the carrier. Witnesses for the carriers, however, radically disagree on this point, as shown by the testimony of two of their leading witnesses, given below in parallel columns.

THE DOCTORS DISAGREE.

Testimony of John E. Loomis, freight agent, at Chicago, of the Pittsburg, Cleveland, Cincinnati and St. Louis Railroad.

We have very superior facilities in Chicago for handling the freight; we have ample room, both freight and car trackage room, *which enables us to handle freight at a minimum cost.*

Q. Are the facilities at Chicago for handling freight greater now than they have been in the past?—A. Yes, sir.

Q. Were they greater in 1900 than they had been previous to that time?—A. Yes, sir.

Q. Do not these greater facilities for the handling of freight reduce the expense to some extent?—A. *Very much, sir.*

Q. Is not the tendency now of modern improvements and facilities for handling the traffic to lessen the expense?—A. *Yes, sir.* (R., 220.)

Testimony of C. E. Gill, chairman of the official Classification Committee.

The improvements in appliances and facilities for transporting and handling traffic which has been made since 1887 *have increased rather than reduced the expenses of handling the traffic.* (P. 36.)

Witness believes "it costs a little more to-day *because of the many labor-saving appliances.* Taking the self-coupling device, it enables them to get along with less help in a way, of course, but the damages that are sustained by freight in transportation has largely increased."

Q. Then these labor-saving appliances are a detriment rather than an improvement?—A. I know that some people are of the opinion that while they are not a detriment, the *cost has been increased.*

Q. They are really, then, no improvement?—A. They are an improvement to the extent that they save human life. (R., 249.)

"Who shall decide, when doctors disagree?"

There can be no difficulty in deciding which of these doctors is correct. The testimony of Mr. Loomis is in accordance with reason and common sense, that of Mr. Gill is not supported by either. We are told by him that labor-saving appliances increase rather than lessen expense, and, in effect, that improvements are detriments.

Commission must rely in these cases on testimony of railroad officials.

The court should bear in mind that in these cases against the railway companies the Commission is compelled to rely upon the testimony of railway officials, These officials are hostile witnesses so far as the Commission is concerned and willing witnesses in behalf of the railway companies. They are, in fact, the real defendants, because it is their work which is being attacked. They make classifications and rates, and consequently with them "whatever is, is right," so far as these matters are concerned.

It can not be claimed that these witnesses are exempt from the human infirmity of bias. The law recognizes that interested witnesses are subject to bias and, therefore, allows the fact of interest to be given in evidence before courts and juries to be considered by them in weighing the testimony of such witnesses. An examination of the testimony in this case will show that this bias of railway officials is constantly cropping out and, at least, giving color to their testimony.

XVIII.

CONFLICT BETWEEN THE OPINION OF MR. GILL, CHAIRMAN OF THE OFFICIAL CLASSIFICATION COMMITTEE, AND THAT OF MR. MAXWELL, COUNSEL FOR THE APPELLANT, AS TO WHETHER OR NOT THE MEMBERS OF THE OFFICIAL CLASSIFICATION COMMITTEES ARE EXPERTS.

Interstate Commerce Commission held by the courts to be "an expert tribunal."

Mr. Maxwell, as counsel for the appellants, in his oral argument before the court pronounced the various Official Classification committees which framed the 19 classifications in which L. C. L. soap is placed in class 4, to have been experts of the highest order, selected as members of such committees because of their exceptional qualifications for the duties which they were called upon to perform as such members.

Mr. C. E. Gill, chairman of the Official Classification Committee, expresses an opinion directly antagonistic to that of Mr. Maxwell on this point. With a view, doubtless, of lessening the force of the deliberate action of those committees in placing L. C. L. soap for so long a time in class 4, he gives it as his opinion that, while the classification committees are most important committees, and composed of railway officials, they **"could not be pronounced experts,"** but were selected **"more particularly from a geographical standpoint and not solely with a view to their competency."** (R., bot. p. 248.)

The statement that the members of so important a committee as a classification committee are selected rather with a view to their geographical location than to their competency and can not be "pronounced experts," taxes our credulity. We can not but agree with Mr. Maxwell and believe that Mr. Gill's zeal in behalf of the carriers has led him unconsciously into an error. If, however, Mr. Gill be correct in this matter, it does away with any weight which might otherwise be given to the action of the Classification Committee which January 1, 1900, advanced the classification of L. C. L. soap from class 4 to class 3 and subsequently, March 10, 1900, made the classification of L. C. L. soap class 3 less 20 per cent.

The Commission an expert tribunal.

If, as Mr. Gill testifies, the members of the Classification Committee can not be "pronounced experts," the Interstate Commerce Commission has the advantage in that it is held by the courts to be "an expert tribunal," and its action is therefore entitled to more weight than that of an inexpert committee. In *East Tenn., Va. & Ga. Ry. Co. et al.* v. *The Interstate Commerce Commission* the Circuit Court of Appeals, Judge Taft, delivering the opinion of the court, says:

"It has been suggested that traffic managers are much better able, by reason of their knowledge and experience, to fix rates and to decide what discriminations are justified by the circumstances than the courts. *This can not be conceded so far as it relates to the Interstate Commerce Commission, which, by reason of the experience of its members in this kind of controversy and their great opportunity for full information, is, in a sense, an expert tribunal.*" (99 Fed.

Rep., p. 64.) (While this case was reversed in the Supreme Court, it *was not reversed on this point*, and the above extract from the opinion is quoted and approved in *I. C. C.* v. *L. and N. R. R. Co.*, 118 Fed. Rep., 622.)

At the time (May 14, 1903) when the order of the Commission sought to be enforced in this case was made, all the members of the Commission had been serving for a number of years, and, as said by Judge Taft, "by reason of their experience in this kind of controversy and their great opportunity for full information," were entitled to be considered experts."

XIX.

ABANDONMENT OF INCREASED EXPENSE OF OPERATION AS GROUND FOR ADVANCE.

Commission in speaking of "Relative Rates," had in mind such rates as between C. L. Soap and other articles of C. L. Traffic or as between L. C. L. Soap and other articles of L. C. L. Traffic.

Counsel for appellants in the court below abandoned the increase in operating expenses as a ground or excuse for the advance in classification and rate and contended that the only question was as to the relation which should be maintained between the rates on C. L. and on L. C. L. soap.

In their printed argument filed in that court it is said:

"The question whether the increase in rates made by Classification No. 20 was justified by the increase in the cost of operating the railroads, so much debated before the Commission, is not involved in this hearing. The Commission declined to decide it. They said:

"'We regard the primary and controlling question in this case as a question of classification; that is, of *relative rates* [italics theirs], and dispose of it accordingly.'"

The context shows that when the Commission used this language it was discussing solely the question of the reasonableness of the advance of C. L. soap from class 6 to class 5 and was considering "*relative rates*" only as between C. L. soap and other *C. L.*

traffic. Immediately following the statement quoted by counsel for the appellants the Commission says:

"So long as *most articles* entitled to as low rates as C. L. soap are put in the 5th class and required to pay 5th-class rates we are not warranted on the evidence before us in condemning the same rating for that commodity."

(R., bot. p. 81.)

After thus disposing of the charge as to the advance in classification and rate of C. L. soap, the Commission proceeds in the next paragraph to consider the advance in the classification and rate of L. C. L. soap from class 4 to class 3 less 20 per cent. (R., 82.)

XX.

THE CLASSIFICATION OF SOAP L. C. L. NOT CONTROLLED BY THE CLASSIFICATION OF SOAP C. L., BUT BY THE RELATION WHICH SOAP L. C. L. BEARS TO OTHER ARTICLES L. C. L.

Counsel for the appellants contend, in effect, that the classification of C. L. soap should control the classification of L. C. L. soap and that the Commission having held, as they claim, that the class 5 classification is the proper classification for C. L. soap it follows that the class 3 less 20 per cent classification is proper for L. C. L. soap, because under these classifications the same difference in rates between C. L. and L. C. L. soap is maintained as existed under the classification in force before the advance.

In the first place the Commission does not hold that the class 5 classification and rates are reasonable for C. L. soap.

It takes pains to expressly exclude any such inference. The Commission says:

"So long as most articles entitled to as low rates as carload soap are put in the fifth class and required to pay fifth-class rates, *we are not warranted, on the evidence before us, in condemning* the same rating for that commodity. This disposition of the case, however, will not authorize the retention of carload soap in fifth class if the classification of other articles with which soap is compared should be reduced. *Nor will anything now decided preclude the Commission*

from holding, in an appropriate proceeding, that fifth-class rates in this territory are excessive."

(R., bot. p. 81, top p. 82.)

No complaint was made and no issue presented to the Commission as to the relation between the classification and rate on C. L. soap and L. C. L. soap. As the Commission in the case of C. L. soap simply considered the relation in rates which should be maintained between it and other articles of C. L. traffic, so in the case of L. C. L. soap the question is presented as to the relation which should be maintained between that soap and other articles of L. C. L. traffic. The question is not what shall be the difference in rates between C. L. soap and L. C. L. soap, but whether the *increased* rate on L. C. L. soap is justifiable when compared with the rate on other L. C. L. traffic. In this connection we quote what is said by the court below on this point:

"*The classification of soap in less than carload lots is not controlled by the classification of soap in carload lots,* nor its reclassification by the maintenance of relative difference in rates between the two; but, on the contrary, the classification and reclassification of soap in L. C. L. lots should be controlled by the relation *it bears to other articles in less than carload lots*—that relation to be determined by the degree in which, in comparison with such other articles, its handling and carrying is, or may be, affected by the cost of service, competitive and commercial conditions, volume, density, distance, value, and risk of loss or damage."

"It is true that these elements must be considered in determining the classification of articles in carload lots, *but from a different standpoint.* A given article of traffic may be more or less desirable when shipped in less than carload lots than when shipped in carload lots. *Bulk, weight, form, manner of packing,*

etc., may materially affect the classification of articles to be carried in the same car when they might have little or no weight in the classification of a single article to be carried in carload lots. A single car may carry many different articles and, necessarily, the convenience, inconvenience, cost of handling, and carrying must be considered in fixing the rate which each should bear and in determining the class to which each should be assigned; but *the elements of disadvantage attending the combination of different articles in one shipment are eliminated from shipments of each article separately in carload lots,* and it follows that rates and classifications must be controlled by the character of the shipment; that shipments which include and combine different articles of traffic in less than carload lots require rates and classification necessary to meet the convenience, inconvenience, and cost of handling a carriage incident to such combination, *which do not attend the shipment of a single article in carload lots.* In other words, the classification of soap for carriage in less than carload lots should be based upon its relation to other articles for carriage in less than carload lots and not upon its relation to soap for carriage in carload lots." (Italics ours.)

(R., 1091.)

The court below further says:

"Common soap in less than carload lots was assigned to the fourth class in the first classification made under the act to regulate commerce, and remained there until the reclassification complained of, *and did not follow the variations of soap in carload lots*; and the replacing of soap in carloads in the fifth class did not justify the displacing of soap in less than carloads from the class in which it had been voluntarily maintained by the defendants for more than thirteen years."

(R., bot. p. 1091, top p. 1092.)

The significant fact cited by the court below in the above extract from its opinion, namely, that

soap L. C. L. *has not "been made to follow the variations"* in the classification of soap C. L., shows conclusively that the classification of soap C. L. has not controlled that of soap L. C. L. and that classification experts have not acted upon the theory that a fixed relation should be maintained between the classification of soap C. L. and that of soap L. C. L.

XXI.

IF CLASSIFICATION AND RATE OF C. L. SOAP SHOULD CONTROL CLASSIFICATION AND RATE OF L. C. L. SOAP, THE APPELLANTS FURNISH STRONG EVIDENCE IN THEIR CLASSIFICATIONS THAT C. L. SOAP BEING IN CLASS 5, L. C. L. SOAP SHOULD BE IN CLASS 4.

As we have seen, during the thirteen years from April 1, 1887, the date of the first Official Classification, to January 1, 1900, the date of Official Classification No. 20, in which the advanced classification complained of in this case was made, the appellants placed L. C. L. soap continuously in class 4 and during that time soap L. C. L. was in class 5, except when taken out of that class and placed in class 6 by order of the Commission.

(See p. 17, *ante*.)

In Official Classification No. 20 there are *259 articles*, which when shipped C. L. are in class 5, and when shipped L. C. L. are in class 4. These articles are named in the appendix to this argument. (R., 282.)

If any fixed relation should be maintained between the rates on C. L. and L. C. L. traffic the fact that 259 articles classed 5 C. L. are classed 4 L. C. L. tends strongly to show that those respective classifications were considered by the classification experts as establishing the proper relation.

Among these 259 articles, moreover, are a large number which are admitted by the railway experts

examined as witnesses to be analogous to soap L. C. L. in respect to the convenience and cost of handling at terminals. It is admitted that soap L. C. L. can be handled at the same or less expense and more conveniently than some of those articles, for example, lead and brick.

(Test. Bobinett, R., 167, 168.)

Mr. C. E. Gill, chairman of the Official Classification Committee and a leading witness for the appellants, testified that the difference in expense to carriers between C. L. and L. C. L. traffic in general resulted from the cost of handling, and admitted that in respect to convenience of handling and cost of transportation the following articles, all of which are class 5 C. L. and class 4 L. C. L., compare favorably with, or do not differ materially, from soap:

"Beans; tar; coal tar; alumina; alum; fish, pickled or assorted; glucose, shipped in boxes or barrels; grape sugar; putty; paint, in barrels; lead; potash; peas, dried and split; putty, in pulp; pewter; sheet iron; sled bottoms, etc."

(R., 242, 243.)

Soap, under the Western Classification, as we have seen, is class 5 C. L. and class 4 L. C. L.

(R., 53, 54.)

We submit that the actual practice of the appellants should have more weight than the estimates or mere guesses of railway officials as to the cost of handling L. C. L. traffic *in general*.

XXII.

EVIDENCE OF GREAT EXPENSE IN HANDLING L. C. L. TRAFFIC IN GENERAL DOES NOT EVEN TEND TO SHOW THAT C. L. SOAP BEING IN CLASS 5 L. C. L. SOAP SHOULD BE CLASS 3 LESS 20 PER CENT.

The evidence introduced in behalf of the appellants o show that C. L. soap being in class 5 L. C. L. soap hould be in class 3 less 20 per cent has only a remote, f any, bearing on that point. That testimony is imply to the effect that the handling of L. C. L. reight in *general* is much more expensive than the andling of C. L. freight. This is not disputed.

Proof (if it had been made) that the excess of L. C. L. ates over C. L. rates is not sufficient to cover the extra ost of handling L. C. L. traffic is as much proof that he C. L. rates are relatively too high as that the L. . L. rates are relatively too low. Manifestly, if the . C. L. rates do not exceed the C. L. rates to the xtent of the greater expense of handling the L. C. L. raffic, it may be because the C. L. rates are relatively oo high.

What the difference in expense is is not made to ppear by satisfactory evidence. The witnesses give stimates *as to the expense of handling L. C. L. traffic n general* and claim that these estimates are based n calculations from certain data in their possession, ut neither these calculations nor that data are pro- luced. Those estimates vary from 31 cents a ton o over 72 cents a ton.

(Test. Scaife, R., 227, 229; Connor, R., 179–181; Barnard, R., 113; Loomis, R., 219.)

XXIII.

THE EVIDENCE DOES NOT RELATE TO SOAP, BUT TO THE AVERAGE EXPENSE PER TON OF HANDLING L. C. L. TRAFFIC IN GENERAL.

L. C. L. Soap Above the Average as to Convenience of Handling and Therefore Below the Average as to Expense of Handling.

The testimony is that "some classes of freight can be handled a great deal cheaper than others."

(Connor, R., 180; Scaife, R., 227.)

Soap is shipped in boxes, whether C. L. or L. C. L., and because of the convenience of handling it is a desirable traffic. As to the characteristics of soap which make it a desirable article of traffic for carriers to handle, the Commission says:

"Common soap is packed in convenient form for handling by carriers, and it is heavy, compact, and not bulky in proportion to weight, in comparison with other grocery articles; its liability to damage is very slight; the risk is very light in case of wreck of train; a car can easily be filled with soap to its full capacity; it does not deteriorate in transportation; it furnishes a very large volume of traffic, as indicated by the amount manufactured; the material for its production is brought together from many parts of the country, and the soap is distributed everywhere, which indicates the length of haul to which it is subject; its distribution by railroads is as general as its use by individuals; as the latter universally participate in its

use, the former must as generally engage in its transportation; it is not tainted by offensive odors of other articles or filth of cars, and can therefore be transported in some cars that would be unfit for many grocery articles; it does not soil a car or affect other freight." The fifth class contains few, if any, more desirable articles than soap in point of convenience of handling and loading, and in this respect it is fully equal to package freight of any class. * * * (R., 60, 61.)

From this it appears that soap is above the average as to convenience of handling, and therefore that evidence as to the average cost of handling traffic *in general* can not indicate with any degree of accuracy the cost of handling soap.

It is well settled that the volume of an article of traffic transported is an element to be taken into consideration in fixing its rate—the greater the volume the lower the rate. *The volume of the soap traffic is greater than that of traffic in general.* The Commission finds:

"The volume of the soap traffic is very considerable. While no statistics are given showing even approximately the aggregate amount offered for carriage, it does appear that about 1,000,000,000 pounds of soap, equal to 500,000 tons, are annually produced in the United States, and of this tonnage much more than half is apparently produced in Official Classification Territory." (R., 61.)

XXIV.

CLAIM THAT L. C. L. RATES ON TRAFFIC IN GENERAL ARE "INADEQUATE" AND THAT L. C. L. TRAFFIC IN GENERAL IS UNPROFITABLE.

C. E. Gill, who, as before stated, is chairman of the Official Classification Committee and the principal witness for appellants on classification, testified that the advanced classifications of soap, C. L. and L. C. L., did not represent the difference in cost of handling such shipments. He further testified that the L. C. L. rates on traffic in general were "inadequate" and "absolutely unremunerative to the carrier." (R., 244, 245, 247.)

This is an admission that all L. C. L. classifications are wrong and that there was *no more ground for advancing the L. C. L. classification of soap than of any other L. C. L. traffic.* The increasing of the rate on L. C. L. soap under such circumstances *without increasing the L. C. L. rates on traffic in general, was an unjust discrimination against soap. This was one of the grounds of complaint before the Commission.* (R., 12.)

Under these circumstances, the proper course to be pursued by the carriers is that suggested in the following extract from the opinion of the court below:

"If it be claimed that prior classifications and rates have never been adequate to the costs of handling and carrying freight in less than carload lots, then there should be a general reclassification which would apportion the cost of service equally, or approximately so, among the different articles of traffic and between carload lots and less than carload lots thereof." (R., 1092.)

XXV.

THE QUESTION, ONE OF FACT, "PECULIARLY WITHIN THE PROVINCE OF THE COMMISSION."

The Commission found in effect that under the testimony before it, the advance in classification of L. C. L. soap from class 4 to class 3 less 20 per cent was without just excuse and subjected the soap traffic in the Middle West to an undue prejudice and disadvantage. This was a finding of fact, "peculiarly within the province of the Commission."

The court below sustained the findings of the Commission on the evidence before the Commission and further held that the evidence taken in court in behalf of the carriers did not rebut those findings. (R., 1091.)

Where the Commission has duly investigated the facts and the court below has sustained the findings of the Commission on such investigation, this court will decline to undertake an original investigation of the facts on its own account and will not set aside the findings of the Commission except in a clear case of error.

C., N. O. & T. P. Ry. Co. *v.* I. C. C., 162 U. S., 194;
L. & N. R. R. Co. *v.* Behlmer, 175 U. S., 675;
E. T., Va. & Ga. Ry. Co. *v.* I. C. C., 181 U. S., 27.

In C., N. O. & T. P. Ry. Co. *v.* I. C. C., *supra*, known as the "Social Circle case," this court refused

to make an original investigation of the facts and set aside findings of fact of the Commission, because, as the court said, "the question was one of fact peculiarly within the province of the Commission, whose conclusions have been accepted and approved by the Circuit Court of Appeals."

Substituting Circuit Court for Circuit Court of Appeals, this is strictly applicable to the present case.

The conclusions of the Commission, based on its findings of fact, prima facie correct.

The statute, as we have seen, *expressly* makes the findings of fact of the Commission *prima facie* evidence of the matters therein stated, but the courts have gone further and held that the *conclusions* of the Commission from those facts are to be held by the courts to be *prima facie* correct. In *I. C. C.* v. *L. & N. R. R. Co., et al.*, the United States Circuit Court for the southern district of Alabama says:

The findings of fact in the report of the Commission are made by law *prima facie* evidence of the matters therein stated, and *the conclusions of the Commission* based upon such findings are presumed to be well founded and correct, *and they will not be set aside unless error clearly appears.* The record does not clearly show that the Commission's findings and conclusions * * * are erroneous—are not in accordance with the law and the evidence, and the court should not overrule or in any other manner interfere with them. (102 Fed. Rep., p. 709.)

The above is quoted and approved in *I. C. C.* v. *L. and N. R. R. Co.*, 118 Fed. Rep., p. 622.

We respectfully submit that the decree of the Circuit Court should be affirmed.

L. A. SHAVER,
Solicitor for Appellee.

P. J. FARRELL,
Attorney.

APPENDIX.

OFFICIAL CLASSIFICATION NO. 20. EFFECTIVE JANUARY 1, 1900.

	Articles taking, 4 L. C. L.; 5 C. L.
1	Acetate of lime.
2	Actinolite ore.
3	Aluminal.
4	Anchors (iron), n. o. s.
5	Anchors, building, wrought iron.
6	Anvils (iron).
7	Argols.
8	Armor plate (iron and steel).
9	Asbestos ore.
10	Ashes (pearl or pot).
11	Axles (car or locomotive).
12	Axles (iron or steel), n. o. s.
13	Babbitt metal.
14	Band iron.
15	Barb wire.
16	Barium (chloride of).
17	Bath brick.
18	Beans, n. o. s.
19	Binding wire or wire ties.
20	Bisulphide of lime.
21	Bisulphide of soda.
22	Black lead.
23	Blue vitriol.
24	Boiler flues or plates (iron).
25	Boiler iron.
26	Bolts (iron).
27	
28	Box straps (iron, steel, or wire).
29	Braces, extension (iron or steel).
30	Brackets (telegraph).
31	Brake beams (iron).
32	Brake shafts of rods.
33	Brake shoes (iron).
34	Brake-shoe slugs (iron or steel).
35	Brick (enameled glazed).
36	Brick (stove lining).
37	Bridge material (wooden).
38	Bumpers (iron).
39	Bumping posts (railroad).
40	Candle tar.
41	Carbide of silicon.
42	Carboy stoppers (clay).
43	Car bolsters bearings.
44	Car bolsters caps (iron or steel).
45	Car couplers (automatic).
46	Car-coupler knuckles.
47	Car-journal boxes and covers.
48	Car-spring plates.
49	Car wheels (paper or iron).
50	Castings (locomotive cylinder).
51	Cattle guards (iron).
52	Caustic potash.
53	Center plates (car).
54	Coal tar.
55	Coke tar.

	Articles taking, 4 L. C. L.; 5 C. L.
56	Conduits (electric insulating, iron).
57	Same, cemented.
58	Same, terra cotta.
59	Same, clay.
60	Cores (iron).
61	Corner irons (car).
62	Crestings (galvanized iron) packed flat.
63	Crestings (iron in boxes or barrels).
64	Drilling compounds.
65	Dross (tin).
66	Elbow joints (iron and steel).
67	Fence posts (sheet iron).
68	Ferromanganese.
69	Fire kindlers.
70	Fire plugs (iron).
71	Fish (pickled or salted), n. o. s.
72	Flanges (wheel, iron).
73	Fleshings.
74	Flues (iron).
75	Foots (molasses, oil).
76	Frogs (railroad, iron).
78	Furniture stain.
79	Galvanized iron.
80	Gas pipe (iron).
81	Gas-pipe hooks (iron).
82	Gas retorts (iron).
83	Gas tar.
84	Glucose.
85	Glue stock or scrap.
86	Grape sugar.
87	Graphite or graphite ore.
88	Hangers (timber).
89	Hasps (iron or steel)
90	Hasp hooks (iron or steel).
91	Hasps with hooks (iron or steel).
92	Hay bands.
	Hides:
93	Calfskins (green).
94	Hide plates or scraps.
95	Hog skins (green).
96	Horseshoe nails.
97	Horse, mule, or ox shoes.
98	Hyposulphide of soda.
99	Ingot mold staples (iron or steel).
100	Insulator pins (telegraph).
	Iron and steel:
101	Billets, blooms ingots (n. o. s).
102	Angle iron.
103	Black plate.
104	Bolts (bridge or barge), 12 inches and over.
105	Bolts, nuts, rivets, staples, or washers (iron)
106	Bridge iron.

20562—07——5

Official Classification No 20. Effective January 1, 1900—Continued.

	Articles taking, 4 L. C. L.; 5 C. L.
	Iron and steel—Continued.
107	Castings (iron n. o. s., 15 pounds and over).
108	(Same securely wired in bundles.)
109	Castings (iron, n. o. s., boxes or barrels).
110	Ceiling (iron).
111	Ceiling moldings (iron).
112	Chain or chain cable (iron, loose).
113	Chain sprocket.
114	Chain belting.
115	Chairs (railroad).
116	Chain iron.
117	Corrugated sheet iron.
118	Cotton ties.
119	Cotton-tie buckles.
120	Crowbars.
121	Drawbars.
122	Drawheads.
123	Fence posts (cast iron).
124	Fish plates (railroad).
125	Forgings (iron).
126	Forgings (carriage).
127	Fronts (architectural).
128	Hoop iron.
129	Lathing (iron or steel).
130	Links and pins.
131	Lintels
132	Locomotive wheels and tires.
133	Nail plate.
134	Nails or spikes.
135	Nut locks.
136	Picket pins.
137	Picket points.
138	Pipe (cast iron).
139	Pipe (wrought iron).
140	Pipe balls.
141	Pipe fittings.
142	Planished sheet iron.
143	Plate (iron or steel), U. S. standard gauge.
144	Plates (architectural).
145	Pole caps.
146	Pole steps.
147	Splices, switches, and switch stands.
148	Rail brace.
149	Roofing (iron).
150	Sash weights (packed).
151	Shafting.
152	Sheet bars.
153	Sheet iron and steel.
154	Shingle bands.
155	Shovel blanks.
156	Shutters.
157	Singletree or doubletree irons (unfinished, packed).
158	Sinks (nested).
159	Skelp iron.
160	Skelp steel.
161	Spiegel iron and eisen.
162	Spools (paper, iron), empty.
163	Spring cotter or spring keys.
164	Stairs or stair work.
165	Stake pockets (car).
166	Standpipes.
167	Staples (iron, galvanized).
168	Stables (wire, in kegs).
169	Steel (in boxes or barrels).
170	Steel (in bundles, plates, or slabs).
171	Stopcock boxes.
172	Tack plate.
173	Taggers' iron.

	Articles taking, 4 L. C. L.; 5 C. L.
	Iron and steel—Continued.
174	Tamping bars.
175	Tank iron.
176	Tie plates (R. R.).
177	Timber hangers or stirrup irons.
178	Tin plate bars.
179	Toe calks.
180	Tubing (in rough).
181	Turn-buckles.
182	Tuyers.
183	Water pipe.
184	Wedges.
185	Weights (beds).
186	Weights (for hoisting elevators).
187	Wire (fence).
188	Wire (iron, packed).
189	Wire (in bundles or coils).
190	Wire (iron, galvanized).
191	Wire (mattress).
192	Wire (steel, in boxes, bundles, or coils).
193	Wire (steel, in barrels or casks).
194	Wire (telegraph).
195	Wire rods.
196	Journal boxes and covers.
197	Jute or jute lashes.
198	Jute butts.
199	Kindlers (fire).
200	Lag-screw bolts.
201	Lag screw.
202	Lead (nitrate of).
203	Lead (sublimed).
204	Lead (sugar of).
205	Lead (sulphate of).
206	Lentils.
207	Litharge.
208	Manganese.
209	Manila or sisal.
210	Millstones.
211	Molasses.
212	Mortar stains or colors.
213	Nitrate of soda.
214	Paints (dry, n. o. s., in kegs, half barrels, or barrels).
215	Paints (in oil, n. o. s., in kegs, half barrels, or barrels).
216	Paints (asbestos, asphalt, chemical-lead, paraffin, rubber, zinc, zinc oxide, in wood).
217	Same, dry.
218	Paints (earth, iron, metallic, mineral oil, in wood).
219	Same, dry.
220	Peas, (dried).
221	Peas (split).
222	Pea hulls.
223	Pipe (stove, sheet iron).
224	Pitch (n. o. s.).
225	Plumbago (in barrels or casks).
226	Plumbago facings (in barrels or casks).
227	Portable railway tracks.
228	Potash (n. o. s. in barrels and casks).
229	Potash (caustic in iron drums).
230	Powder keg heads, bottoms, and stoppers (sheet iron).
231	Putty (in bulk).
232	Railroad tie plugs (wooden).
233	Rail joints.
234	Roofing (tin).
235	Roofing (n. o. s.).
236	Roofing composition.
237	Rubber (scrap).
238	Saltpeter.
239	Smalts (painters').

Official Classification No, 20. Effective January 1, 1900—Continued.

	Articles taking, 4 L. C. L.; 5 C. L.		Articles taking, 4 L. C. L.; 5 C. L.
240	Sodium (sulphide of).	251	Ultramarine blue.
241	Spring bed ties (wire).	252	Potatoes and sweet potatoes.
242	Stove putty or cement.		Vehicles, viz:
243	Sulphate of iron.	253	Axles (iron or steel, n. o. s.).
244	Sirup (n. o. s.,) in wood.)	254	Bicycle forks (iron or steel, in rough).
245	Tacks (iron or strel, in boxes, kegs, or barrels).	255	Thimble skeins (iron).
246	Same, (in wooden boxes packed in cases).	256	Tires (carriage or wagon, iron or steel).
247	Tacks (wire, in kegs or barrels).	257	Wall finish (n. o. s.).
248	Tar (n. o. s., in barrels).	258	Wood filler (in kegs, half barrels, or barrels).
249	Terra cotta (for building).	259	Woods of value (logs).
250	Tin plate (n. o. s.).		

O